

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD WESTON CAUGHLAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
September 21, 2006

v

ELEANOR W. CAUGHLAN,  
  
Defendant-Appellee.

No. 268983  
Leelanau Circuit Court  
LC No. 05-007036-DO

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Before: Fort Hood, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

The parties were married in California on November 12, 1966, a state that both parties had resided in since childhood. After they married, the parties lived in Connecticut for approximately seven years before returning to California to reside. Defendant alleged that the parties spent intermittent time periods in Connecticut and Michigan, but she ultimately returned to California where she had a driver's license and was registered to vote. Defendant alleged that she had not been present in Michigan since 1980, and the only time spent in the state was during the summer.

Defendant filed a petition for divorce in California on July 17, 2001. However, the case remained pending when plaintiff filed this complaint for divorce in Leelanau County on October 24, 2005. Although the complaint acknowledged the pending divorce action in California, plaintiff alleged that defendant had delayed and abandoned her desire to complete the California divorce petition. Plaintiff alleged that jurisdiction was proper in Michigan because he had resided in the state for at least six months and in Leelanau County for at least ten days before filing the complaint for divorce. The complaint for divorce sought division of property, equitable distribution, and dissolution of the marriage, but did not specify the location of the property and the extent of any marital assets.

On January 3, 2006, defendant filed a special appearance for the limited purpose of requesting dismissal of the complaint based on forum non conveniens. Defendant alleged that the divorce action was filed in July 2001, and was proceeding, but no action was taken during a period when the parties attempted reconciliation. It was alleged that the action in California should be allowed to continue where the parties had significant ties to that state, spent the

majority of their married life there, had significant assets there, and had extensively litigated the action there. Defendant also alleged that she was in poor health and was unable to travel. It was further alleged that the California proceeding was impeded by plaintiff's noncompliance with discovery.

Plaintiff opposed the motion for summary disposition based on forum non conveniens, alleging that the parties "maintained" a residence in Michigan for the majority of the marriage. Plaintiff alleged that the couple moved to Michigan where they obtained Michigan driver's licenses and voted absentee ballot in Leland Township. He alleged that defendant abandoned the divorce proceeding in California as evidenced by a letter indicating that she fired her California attorney. It was further alleged that plaintiff was in compliance with all discovery requests, but acknowledged that he was not fully apprised by his California counsel of all that transpired in that case. Plaintiff asserted that witnesses and documents were present in Michigan. He also alleged that his health was failing and that may be why defendant was delaying the divorce proceeding.

The trial court heard oral arguments regarding the dispositive motion. The court found that there was a divorce proceeding pending in California, but a cross complaint for divorce had not been filed. The court examined the documentation submitted from the California petition and concluded that, other than the time period when reconciliation was attempted, any delay in the case was attributed to plaintiff who had not complied with discovery. Moreover, the trial court concluded that the intervention by a Michigan court would be costly to both parties in light of the resources that had been expended in the California petition.

Plaintiff alleges that the trial court erred in granting the defense motion to dismiss based on forum non conveniens. We disagree. The trial court's decision to grant or deny a motion to dismiss based on forum non conveniens is reviewed for an abuse of discretion. *Radeljak v DaimlerChrysler Corp*, \_\_\_ Mich \_\_\_; 719 NW2d 40 (2006), slip op p 3. An abuse of discretion occurs when the decision results in an outcome that is outside the principled range of outcomes. *Id.* Forum non conveniens is the principle that establishes the right of a court to resist imposition upon its jurisdiction even when jurisdiction could properly be invoked. *Hacienda Mexican Restaurants v Hacienda Franchise Group, Inc*, 195 Mich App 35, 38; 489 NW2d 108 (1992). It allows the court to invoke its discretion to decline jurisdiction when convenience of the parties and the ends of justice would be better served if the legal action was filed and tried in another forum. *Radeljak, supra* at p 3. It is a common law doctrine created by the courts that allows a court to refuse to hear a case. *Id.* at pp 3-4. Traditionally, the plaintiff's selection of the forum was accorded deference, although the court could consider the residence of the parties when deciding whether to exercise or decline jurisdiction. *Id.* at p 4. However, the ultimate inquiry addresses where the trial will best serve the convenience of the parties and the ends of justice. *Id.*

In *Cray v General Motors Corp*, 389 Mich 382, 395-396; 207 NW2d 393 (1973), our Supreme Court concluded that a balancing and weighing of the following factors should be considered in rejecting or accepting jurisdiction when the doctrine of forum non conveniens is alleged:

1. The private interest of the litigant.

- a. Availability of compulsory process for attendance of unwilling and the cost of obtaining attendance of willing witnesses;
  - b. Ease of access to sources of proof;
  - c. Distance from the situs of the accident or incident which gave rise to the litigation;
  - d. Enforcibility of any judgment obtained;
  - e. Possible harassment of either party;
  - f. Other practical problems which contribute to the ease, expense and expedition of the trial;
  - g. Possibility of viewing the premises.
2. Matters of public interest.
- a. Administrative difficulties which may arise in an area which may not be present in the area of origin;
  - b. Consideration of the state law which must govern the case;
  - c. People who are concerned by the proceeding.
3. Reasonable promptness in raising the plea of forum non conveniens.

Following review of the above listed factors, we cannot conclude that an abuse of discretion occurred. *Radeljak, supra*. The criteria addressing compulsory process, ease of access to proofs, and the distance from the underlying basis for the litigation appears to be equal with regard to both parties. However, the possible harassment factor favors defendant because the trial court expressly found that the delay in the California litigation was caused by plaintiff, as evidenced by the pleadings from the California action. The practical problems factor also favors defendant. The trial court found that there was an investment in resources in pursuing the California action, and there would be a duplication of resources by pursuing an action in Michigan simultaneously. With regard to the possibility of viewing the premises, this factor does not favor either party in light of the fact that video technology and appraisers could be utilized to aid the court in assessing this factor. Similarly, the enforcement of any judgment factor does not appear to favor either party.

The matters of public interest factors also favor defendant. Difficulties could occur because there will be a duplication of effort and resources to administer complaints for divorce in two different states, and the parties will have to ensure that filing in each location is proper. Moreover, the public interest is not served by permitting two actions involving the same subject

matter to proceed in two different locations. The public and members of the judiciary should expect that their resources are being utilized by its supporting citizens and not as leverage in another action. As the trial court noted, the documentation from the California action indicates that plaintiff has not complied with discovery.<sup>1</sup> There is the potential that the Michigan action will be utilized to further complicate or obviate the orders from the California court. The application of the state law with respect to each case does not favor either party. Lastly, defendant's assertion of the doctrine of forum non conveniens was extremely prompt.

Under the circumstances, we cannot conclude that the trial court abused its discretion by granting the motion to dismiss based on forum non conveniens.<sup>2</sup>

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Richard A. Bandstra  
/s/ Pat M. Donofrio

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<sup>1</sup> We note that plaintiff blanketly asserts in his affidavit that he has fulfilled his obligation to provide discovery. However, that assertion is belied by the documentation indicating that a special master was ordered to oversee the discovery process in the California case.

<sup>2</sup> Plaintiff also alleged that the doctrine of forum non conveniens should not be applied in the context of a divorce action. Although the jurisdictional requirements for filing a complaint for divorce are set forth by statute, MCL 552.9, there is no prohibition on the application of the doctrine of forum non conveniens. Indeed, the doctrine of forum non conveniens does not negate the jurisdictional requirements as set forth by statute or at common law. Rather, the doctrine merely grants the court discretion to resist the imposition upon its jurisdiction even if jurisdiction could properly be invoked. *Radeljak, supra* p 4. Accordingly, the challenge on this basis is without merit. Moreover, plaintiff's reliance on the "seriously inconvenient" standard is without merit. The seriously inconvenient standard was overruled by our Supreme Court in *Radeljak, supra* at pp 16-17.